Supreme Court of the United States

OCTOBER TERM, 1915.

No. [redacted] 78

WILLIAM P. GROSS, *Appellant*,

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT

FRANK B. CROSSWAITH,
Attorney for Appellant.

E. P. CELLADAY,
Of Counsel.

Rapid Printing Company, Denver

IN THE

Supreme Court of the United States

OCTOBER TERM, 1915.

No. 389.

WILLIAM P. CROSS, *Appellant,*

vs.

THE UNITED STATES.

APPEAL FROM THE COURT OF CLAIMS.

BRIEF FOR APPELLANT.

The appellant, William P. Cross, clerk of the United States District Court for the district of Rhode Island, sued the United States to recover fees alleged to be due him for services performed in his official capacity. In his petition, the petitioner alleged the facts substantially as found by the court below, to which facts no objections were raised by counsel for the defendant. Upon said facts, and upon the proofs submitted, the Court of Claims found the pertinent facts as follows:

I

That the petitioner, William P. Cross, was clerk of the United States Circuit and District Courts for the district of Rhode Island from July 1, 1907, to October 1, 1912.

II

That during said period the petitioner, as such clerk, performed services for and in behalf of the United States,

and his accounts for fees thus earned, duly verified by his oath, and approved by the court as required by the act approved February 22, 1875, were presented through the Department of Justice to, and were finally acted upon by, the accounting officers of the Treasury Department, and said accounts were in part allowed and paid, but a part thereof was disallowed and payment therefor was refused.

III

The items disallowed were as follows:

For making, by direction of the Department of Commerce and Labor, triplicate copies of the original declarations of intention for naturalization, 8,110 declarations of 3 folios each, 24,330 folios, at 10c per folio	$2,433 00
For attaching seal as required by the Department of Commerce and Labor to each of 8,110 declarations, at 20c	1,622 00
	$4,055 00

IV

The claimant prepared three copies of the declarations of intention of aliens to become citizens of the United States in each of 8,110 cases, each copy having been signed by the declarant, and the jurat to each copy was signed by the claimant; one copy retained on file in the office of the clerk of the United States District Court, another copy delivered to the declarant, and the third copy forwarded to the Bureau of Immigration and Naturalization, under Rule 22 of the Regulations of the De-

partment of Commerce and Labor, said rule being authorized by Section 12 of the Naturalization Law.

V

The claimant collected one dollar ($1.00) from each declarant "for receiving and filing a declaration of intention and issuing a duplicate thereof," one-half of which was paid over to the Bureau of Immigration and Naturalization in accounts rendered quarterly, as provided by Section 13 of the Naturalization Law.

VI

The claimant presented in his accounts for fees earned as clerk of the United States Court, a charge of ten cents per folio for three folios for each declaration, and a charge of twenty cents for seal for each declaration, for making the copies which were forwarded to the Bureau of Immigration and Naturalization, all of which charges were disallowed by the accounting officers of the Treasury Department.

The claimant has received no compensation from any source for said copies of declarations of intention.

VII

The allowance of said fees will not increase the maximum compensation allowed by law to him for any portion of the period from July 1, 1907, to October 1, 1912.

Upon such statement of facts, the Court of Claims concluded, as a matter of law, that the claimant is not entitled to recover, and that his petition should therefore be dismissed.

And upon order of the court the petition was dismissed.

ASSIGNMENT OF ERRORS

The Court of Claims erred in holding—

1. That as a conclusion of law the plaintiff was not entitled to recover.
2. That the petition be dismissed.

FOR MAKING COPY OF DECLARATION OF INTENTION.
FOR AFFIXING SEAL THERETO.

The only question to be determined in this case is, whether or not the appellant is entitled to a fee of ten cents per folio for making a copy of a "declaration of intention" of an alien to become a citizen of the United States, and a fee of twenty cents for the seal attached thereto.

The law applicable to this case is found in the act approved June 29, 1906 (34 Stat. at Large, p. 596, Secs. 12, 13 and 21.)

Sec. 12 provides as follows:

> "That it is hereby made the duty of the clerk of each and every court exercising jurisdiction in naturalization matters, under the provisions of this act, to keep and file a duplicate of each declaration of intention made before him, and to send to the Bureau of Naturalization at Washington, within thirty days after the issuance of a certificate of citizenship, a duplicate of such certificate, and to make and keep on file in his office a stub for each certificate so issued by him,

> whereon shall be entered a memorandum of all the essential facts set forth in such certificate * * *."

That section of the law requires the clerk to send to the Bureau of Naturalization *"a duplicate"* of the *"Certificate of Citizenship."*

The charge made by this appellant in his accounts was not for a duplicate of the "Certificate of Citizenship."

The charge was for making a copy of the *"Declaration of Intention"* to become a citizen, which copy was made at the request of, and forwarded to, the Bureau of Naturalization.

There is no law specifically requiring the clerk of a United States Court to furnish a copy of the "Declaration of Intention" to any person, except the law which provides that the clerk shall properly perform his duties, a part of which is to furnish copies of records and papers on file in his office to any person requesting and paying for the same.

The copy of the "Declaration of Intention" forwarded to the Bureau of Naturalization is always prepared after the proceedings in each case are completed.

The charge made by this appellant of ten cents per folio for making said copy, is provided for under paragraph 9 of Sec. 828, R. S. U. S., which reads as follows:

> "For a copy of any entry or record, or of any paper on file, for each folio, ten cents."

The seal, for which this appellant made a charge of twenty cents for each of said copies, is charged for under paragraph 14 of Sec. 828, R. S. U. S., which reads as follows:

"For affixing the seal of the court to any instrument, when required, twenty cents."

Sec. 13 of the act approved June 29, 1906, provides fees as follows:

a. "For receiving and filing a declaration of intention and issuing a duplicate thereof, one dollar."

b. "For making, filing and docketing the petition of an alien for admission as a citizen of the United States, and for the final hearing thereon, two dollars."

c. "For entering the final order and issuing the certificate of citizenship thereunder, if granted, two dollars."

This claimant has made no charge for any fees which would conflict with the foregoing provisions, for the reason that he has charged for nothing except making a copy of a paper on file in his office.

Sec. 21 of the act referred to above provides:

"That it shall be unlawful for any clerk of any court, or his authorized deputy or assistant, exercising jurisdiction in naturalization proceedings, to demand, charge, collect, or receive, any other or additional fees or moneys in naturalization proceedings, save the fees and moneys herein specified; * * *."

The limitation of fees to be charged under Sec. 13 and the penalty provided under Sec. 21, for making other charges "in the naturalization proceedings" is for the

purpose of protecting the alien applicant from exorbitant charges which might be made by the clerk.

That section has no reference or application to the services performed, or fees charged by this appellant for making a copy of the "declaration of intention," for the simple reason that the making of said copy is in no way a part of the "proceedings" in any naturalization cause, said copy having been made and forwarded to the Bureau of Naturalization after the "proceedings" had terminated.

Sec. 12 of said law referred to above, requiring clerks of courts to forward to the Bureau of Naturalization a copy of each "Certificate of Citizenship," cannot be construed to apply to the services of a clerk of a court furnishing a copy of a "Declaration of Intention."

That section requiring the clerk to furnish to the Department a copy of the "Certificate of Naturalization" brings that service within the limitation of fees allowed to be charged.

It can hardly be contended that, after the proceedings in a naturalization case have terminated, and the clerk of a court makes a copy of the "Declaration of Intention" at the request of the Department, such service can be construed to be a part of the "proceedings" in a naturalization cause, for the reason that the proceedings had terminated before the service was performed, and the service consisted simply of making a copy of a paper on file, and furnished at the request of the Bureau of Naturalization, for which a charge was made of ten cents per folio, under Sec. 828 of the Revised Statutes of the United States.

SEAL WHEN REQUIRED

The declaration of intention made by an alien, after giving a brief description and history of the declarant, and indicating his bona fide intention to renounce forever all allegiance and fidelity to any foreign prince, potentate, etc., and "in good faith to become a citizen of the United States of America, and permanently to reside therein," is sworn to by the declarant before the clerk of the court, and to the declaration is affixed the seal of the court.

The Bureau of Naturalization ordering a copy of the declaration of intention, would necessarily require that the copy should have the seal affixed thereto.

It is well settled that when any duty is imposed on the clerk, who receives no salary but is compensated wholly by fees, he shall receive the fees provided in the Fee Table, Sec. 828, R. S. U. S.

(U. S. vs. McCandless, 147 U. S., 692.)

> "The law thus imposes the duties upon the clerk to make these reports, and fixes the compensation, and having made them, petitioner is entitled to the statutory fees."
>
> (Clough vs. U. S., 55 Fed. Rep., 921.)

> "The clerk is the only Federal officer of the court not paid in part by an annual salary from the Government. His compensation is limited and fixed by the Fee Bill. * * * There is no provision therein requiring the clerk to perform gratuitous services on behalf of the Government, nor would it be just that he be required to do so unless a small annual salary were given him as in

marshals' and district attorneys' cases. His relations with the Government in this respect, therefore, are exactly the same as with individuals. What services it requires of him, if they come legitimately within the terms of his schedule of fees in Sec. 828, R. S. U. S., and whether ordered by a department official or imposed by a statute, must be paid for according to that schedule."

(5 Federal Reporter, p. 440.)

The services charged for in the case at bar were performed by the order and at the request of the Department of Commerce and Labor, the rule being based upon that portion of Sec. 12 of the Statutes which provides, among other things:

> "It shall also be the duty of each clerk of said courts * * * to furnish to said bureau, * * * certified copies of such other proceedings and orders instituted in or issued out of said court, affecting or relating to the naturalization of aliens, as may be required from time to time by the said bureau."

The charges are claimed under Sec. 828 of the Revised Statutes, and the doctrine involved in asking compensation for the services performed is that set forth in the decisions above quoted, they being for copies of papers on file in the court, and are not in any way a part of the proceedings in a naturalization cause.

Respectfully submitted,

F. B. CROSTHWAITE,
Attorney for Appellant.

E. F. COLLADAY,
Of Counsel.